DATO' SRI HJH HAFSAH HARUN & ORS

v.

SECRETARY, DEWAN UNDANGAN NEGERI SARAWAK & ANOR

HIGH COURT SABAH & SARAWAK, KUCHING
ABDUL AZIZ ABDUL RAHIM J
[ORIGINATING SUMMONS NO: 24-136-2007-I]
24 MARCH 2008

CONSTITUTIONAL LAW: *Legislature - State Assembly - Members - Salaries and pensions of - Recovery of arrears on salary adjustment - Limitation - Whether action for recovery time barred - Members of Administration And Members of Dewan Undangan Negeri (Remuneration, Pension And Gratuities) Ordinance 1980, reg. 20(1) - Members of Dewan Undangan Negeri (Remuneration, Pensions And Gratuities) (Amendment) Ordinance 2002, reg. 20(1)*

The plaintiffs were all former members of the Administration and/or the Dewan Undangan Negeri ('DUN') Sarawak. There was a revision of salaries for members of the DUN, Ministers and political secretaries on 1 June 1992. All the plaintiffs had by then ceased to hold their respective positions. When the salary revision was carried out, the plaintiffs' pensions were not accordingly adjusted in accordance with reg. 20(1) of the First Schedule to the Members of Administration And Members of Dewan Undangan Negeri (Remuneration, Pension And Gratuities) Ordinance 1980 (Ordinance No. 9 of 1980) ('the 1980 Ordinance'). This Regulation was subsequently amended on 1 January 2003 by the Members of the Administration and Members of Dewan Undangan Negeri (Remuneration, Pensions And Gratuities) (Amendment) Ordinance 2002 ('the 2002 Ordinance'). The plaintiffs contended that they were entitled to a revision under reg. 20(1) of the 1980 Ordinance. They therefore sought various declarations and orders to the effect that they were rightly entitled to have their pensions revised and for payment of arrears. The defendant contended *inter alia* that the plaintiffs' action was based on non-feasance and was time-barred under item 19 of the Schedule to the Sarawak Limitation Ordinance. The defendant further submitted that there was no direction by the Yang di-Pertua Negeri as required by reg. 20(1) of the First Sch to the 1980 Ordinance, as amended by the 2002 Ordinance.

Held (allowing the plaintiff's action in part):

(1) The provision that governed the re-adjustment of salaries and the re-computation of pensions on the re-adjusted salaries when the revision came into force on 1 June 1992 was the pre-amendment reg. 20(1) of the 1980 Ordinance. Under the pre-amendment reg. 20(1), pensioned members acquired vested rights to have their last drawn salaries adjusted and their pensions re-computed based on the adjusted salaries once a salaries revision for the members came into effect before 1 March 2003. (para 21)

(2) The plaintiffs were not however entitled to the revision of salaries through a revision from 1 March 2003, because under the amended reg. 20(1) any adjustment of salaries and re-computation of pensions thereof could only be done after a Direction had been issued by the Yang di-Pertua Negeri. The plaintiffs in the instant case failed to show that there was such a Direction issued by the Yang di-Pertua Negeri in respect of the 2003 salaries revision. (para 22)

(3) The instant action was filed on 24 April 2007. The plaintiffs' action was not time barred in so far as it is sought the court's order to declare that the plaintiffs entitled to the adjustment of their salaries based on the salaries revision that came into force on 1 June 1992 and the consequential re-computation of the pensions payable to each of them based on the adjusted salaries. However as to the declaration of their entitlements to the accrual pensions, by virtue of Item 19 of the Limitation Ordinance, the plaintiffs were only entitled to the arrears of pensions which had accrued the last two years preceding the filing of the instant action. (para 33)

Case(s) referred to:

Andrew Nyabe (Originating Summons No. 24-421-2005-1) (Unreported) ***(refd)***

Credit Corp (M) v. Fong Tak Sin [1991] 2 CLJ 871; [1991] 1 CLJ (Rep) 69 SC ***(refd)***

Datuk Syed Kechik Syed Mohamed v. Government of Malaysia & Anor [1978] 1 LNS 44 FC ***(refd)***

Hj Hussin Hj Ali & Ors v. Datuk Hj Mohammed Yaacob & Ors & Other Cases [1983] 2 CLJ 68; [1983] CLJ (Rep) 165 FC ***(refd)***

Hj Wan Habib Syed Mahmud & Anor v. The State Government of Sarawak [2007] 4 CLJ 832 HC ***(refd)***

Petroliam Nasional Bhd (Petronas) & Anor v. Cheah Kam Chiew [1986] 1 LNS 81 SC ***(refd)***

Sundralingam v. Ramanathan Chettiar [1967] 1 LNS 173 FC ***(refd)***

Legislation referred to:
Evidence Act 1950, ss. 56, 57(1)(a)
The Members of Administration And Members of Dewan Undangan Negeri (Remuneration, Pension And Gratuities) Ordinance 1980, regs. 3(2), 20(1), (2)

For the plaintiffs - Patrick Anek Uren; M/s Uren & Partners Advocates
For the defendants - Saferi Ali, State Attorney General's Chambers

Reported by Andrew Christopher Simon

JUDGMENT

Abdul Aziz Abdul Rahim J:

[1] The plaintiffs seek declaration that they are rightly entitled to have their respective pension revised and paid with effect from 1 January 1992 pursuant to ss. 3, 6 and 8 respectively of, and including reg. 20 of the First Schedule to The Members of Administration And Members of Dewan Undangan Negeri (Remuneration, Pension And Gratuities) Ordinance 1980 (Ordinance No. 9 of 1980 ('the Ordinance'). The plaintiffs also pray for an order that the 1st and 2nd defendants ('the defendants') pay, and continue to pay, with immediate effect the duly revised pension to the plaintiffs. The plaintiffs further pray that they be paid all arrears of pensions accruals, subject to Item 97, Part IV of the Schedule to Sarawak Limitation Ordinance (Cap. 49) as due under and by virtue of 1992 revisions of salaries of Members as aforesaid, and with interest thereon at 8 percent per annum or at such other rate as the court may determine.

Background Facts

[2] The 1st plaintiff was a member of the Dewan Undangan Negeri from 5 August 1976 to 12 March 1987. He was also an Assistant Minister from 1 November 1976 to 29 December 1983 and a Minister from 30 December 1983 till 9 March 1987. The 1st plaintiff receives a pension of RM1,000 as a Member of Dewan Undangan Negeri and RM2,750 as State Cabinet Minister.

[3] The 2nd plaintiff was a Member of Dewan Undangan Negeri from 4 July 1970 till 18 November 1983. He was also an Assistant Minister from 26 March 1981 till 18 November 1983. Currently the 2nd plaintiff is paid a pension of RM1,000 as a Member of Dewan Undangan Negeri and RM2,000 as an Assistant Minister.

[4] The 3rd plaintiff was a Political Secretary to the Chief Minister from 16 August 1979 till 12 March 1987 and currently he receives a pension of RM1,000.

[5] There was a revision of salaries for the Dewan Undangan Negeri, Ministers and Political Secretaries on 1 June 1992. All three plaintiffs ceased to hold their respective offices before the date of the revision of the salaries. But when the salaries revision was carried on that date ie, 1 June 1992 their pensions were not accordingly adjusted in accordance with reg. 20(1) of the First Schedule to the Ordinance. This regulation was subsequently amended on 1 January 2003 by the Members of the Administration and Members of Dewan Undangan Negeri (Remuneration, Pensions And Gratuities) (Amendment) Ordinance 2002 ("the 2002 Ordinance").

[6] Before the amendment reg. 20(1) reads:

> whenever the salaries of members are revised, the salary on which a pension (granted under regulation 3) or a derivative pension (granted under regulation 6, 7 or 8) is based shall be adjusted to the revised salary as appropriate and the pension or derivative pension recomputed accordingly.

[7] After the amendment the same Regulation reads:

> whenever the salaries of members are revised, the salary on which a pension (granted under regulation 3) or a derivative pension (granted under regulation 6, 7 or 8) is based shall, if so directed by the Yang di-Pertua Negeri, be adjusted to the revised as appropriate and the pension or derivative pension recomputed accordingly.
>
> (the words in italics highlighted the amendment to the Regulation).

[8] The above facts are not in dispute and in fact have been admitted by the defendants as evident by the paras. 7, 8, 9, 10 and 11 of the affidavit in opposition affirmed by Abang Othman bin Abang Fata, the 1st defendant, on 11 June 2007.

[9] It is also to be noted that the amendment to reg. 20(1) was not backdated to the date of the salaries revision ie, 1 June 1992. In other words the amendment has no retrospective effect.

Contentions By The Plaintiffs

[10] The plaintiffs contend that they are entitled to the revision under the pre-amendment reg. 20(1). It was submitted that in a similar case in Originating Summons No. 24-421-2005-I in the High Court in Sabah and Sarawak at Kuching (unreported) the

learned Skinner J had granted a similar claim by the plaintiffs in that case. In that case also the court rejected the argument by the defendant there that the pension is adjustable only if the salaries revision is backdated to a date within the period of reckonable service of the plaintiffs. The learned judge went on to hold that the provisions of reg. 20(1) (before the amendment) and reg. 3(2) of the First Schedule to the Ordinance are clear and unambiguous and give rise to no difficulty or uncertainty in their interpretation. And also the learned judge said reg. 20(2) of the First Schedule to the Ordinance which stipulates that the re-computed pension shall be payable with effect from the coming into force of the revised salaries, would prevent the court from interpreting reg. 20(1) as amended and reg. 3(2) in the way the defendants in that case contended that is the re-computed pensions is payable only if the revised salaries is backdated to a date within the period of reckonable service of the plaintiffs.

[11] On the issue of the amendment to reg. 20(1) which requires a Direction from the Yang di-Pertua Negeri before a re-computed pensions following a salaries revision is payable, the plaintiffs in this case contend that it does not apply to them and the amendment does not affect the salaries revision carried out on 1 June 1992. It was submitted that this issue had also been considered and decided in the above mentioned case by the learned Skinner J and this is what the learned judge said:

> As far as the first revision to a Member's salary which occurred in 1992 is concerned, that revision came into force on 1.6.1992 *vide* the Members of the Administration and Members of Dewan Undangan Negeri (Remuneration, Pensions & Gratuities) (Amendment) Ordinance No. 2 of 1992. On that date, as the Ordinance stood, there was no requirement in Regulation 20(1) for a direction to be received from the Yang di-Pertua Negeri before a former Member's pension could be recomputed. That Regulation as it stood in 1992 directed that there 'shall be' an adjustment 'whenever' the salaries of Members are revised. Further, by Regulation 20(2) the recomputed pension 'shall be payable with effect from the coming into force of the revised salaries'. Accordingly, all the plaintiffs were entitled to have the salaries on which their pensions were based adjusted, and their pensions recomputed and paid to them from 1.6.1992 as provided in Regulation 20(2).
>
> It is the defendants' contention that without a direction from the Yang di-Pertua Negeri to that effect, the plaintiffs are not entitled to be paid such recomputed pensions. I do not agree. Following the first revision, each of the plaintiffs had acquired a vested right under the law that existed at 1.6.1992 to be paid a recomputed pension.

[12] Therefore the plaintiffs submitted that they ought to be entitled to the payment of the re-computed pension under the pre-amendment reg. 20(1) because the salaries revision in this case occurred prior to the amendment.

Contentions By The Defendants

[13] The defendants contend that the plaintiffs require the declarations so that they could obtain compensation from the defendants in the form of accrued pensions with interest thereon. The defendants also contend that the plaintiffs' cause of action is anchored on the non-feasance on the parts of the defendants; and this non-feasance is because the plaintiffs alleged, according to the decision in *Hj Wan Habib Syed Mahmud & Anor v. The State Government of Sarawak* [2007] 4 CLJ 832, there is a statutory duty on the part of the defendants to re-compute the pensions for the plaintiffs whenever there is a revision of the salary of Members of the Dewan Undangan Negeri and to pay the re-computed pension; and that the defendants were in breach of this statutory duty. The defendants submitted that this cause of action is already time barred under Item 19 of the Schedule to the Sarawak Limitation Ordinance when the action was instituted. It was argued that the limitation period under Item 19 of the Schedule to the Limitation Ordinance is two years from the date when the non-feasance takes place.

[14] The defendants argued that non-feasance took place in the first month following the upward revision of salary of Ministers and Members of the Dewan Undangan Negeri that is at the time the plaintiffs received their monthly pensions for the month following the coming into force of the salary revision. Since the revision was in June 1992, the limitation period starts from that time because the plaintiffs knew of the revision and their entitlement to have their pensions revised or re-computed following the revision. It was argued that by end of June 1992 the plaintiffs would have a completed cause of action if, as contended by the plaintiffs, the defendants had failed to revise or re-computed the plaintiffs' pensions based on the revised salaries. However no action was commenced or instituted by the plaintiffs to enforce their rights under reg. 20(1) until April 2007 when this action was filed. There was no explanation by the plaintiffs in their affidavits for this delay. For this long delay and lack of explanation for it the defendants submit, relying on the Supreme Court decision in *Credit Corp (M) v. Fong Tak Sin* [1991] 2 CLJ 871; [1991] 1 CLJ (Rep) 69, that the application must be rejected. In that Supreme Court case, the relevant passage relied by the defendants reads:

> The limitation law is promulgated for the primary object of discouraging plaintiffs from sleeping on their rights/actions and more importantly, to have a definite end to litigation. This is in accord with the maxim interest *reipublicae ut sit finis litium* that in the interest of the state there must be an end to litigation. The rationale of the limitation law should be appreciated and enforced by the courts.

[15] The defendants also argued that the granting of declaratory judgment is a matter at the discretion of the court and the court had the right to withhold the grant of declaratory relief when there had been unreasonable vacillation and delay in applying for such relief: *Hj Hussin Hj Ali & Ors v. Datuk Hj Mohammed Yaacob & Ors & Other Cases* [1983] 2 CLJ 68; [1983] CLJ (Rep) 165 FC.

[16] On the authority of *Datuk Syed Kechik Syed Mohamed v. Government of Malaysia & Anor* [1978] 1 LNS 44 FC, the defendants submit that though the court's jurisdiction to make a declaratory order is unlimited except by its own discretion, such remedy should not be lightly granted; and the power to grant a declaratory relief must be exercised sparingly with great care and jealously, extreme and utmost caution. The factor that the court must take into consideration is the usefulness of the declaration on one hand and the inconvenience and embarrassment that may result on the other. Given the plaintiffs' unexplained delay in enforcing their rights, the defendants contend that, and relying on *Credit Corporation (M) Bhd*, *supra*, there is a presumption that a right not exercised for a long time is non existent. Therefore the plaintiffs' claim should be dismissed.

[17] The other main ground by the defendants to resist the plaintiffs' claim is that no re-computation or adjustment of pension is allowed without a direction from the Yang di-Pertua Negeri. It was contended that this was so because of the amendment to reg. 20(1) of the First Schedule to the Ordinance which came in to effect on 1 January 2003. In this case this action was filed or commenced by the plaintiffs after the coming into effect of the amendment to reg. 20(1). So the defendants argued that by reason of ss. 56 and 57(1)(a) of the Evidence Act 1950 the court must take judicial notice of the amendment and apply the amended provision at the date of hearing of the plaintiffs' present application. To support this contention, the defendants relied on the Supreme Court decision in *Petroliam Nasional Bhd (Petronas) & Anor v. Cheah Kam Chiew* [1986] 1 LNS 81 SC.

[18] The defendants also urged on me not to follow the decision of David Wong JC (as he was then) in *Hj Wan Habib Syed Mahmud*'s case, *supra*, which decided that as to the issue of Limitation Item 97 of the Schedule to the Sarawak Limitation Ordinance (Cap. 49) applies to a case of this nature. It was argued that the learned judicial commissioner (as he was then) did not give any reason for his decision in saying so and also because the defendant is appealing on that part of the finding to the Court of Appeal and still pending. It was submitted that there is the authority of the Federal Court in *Sundralingam v. Ramanathan Chettiar* [1967] 1 LNS 173 which allow a High Court to decline to follow a decision of another High Court of co-ordinate jurisdiction if it disproves it though such departure must not be done lightly and only for good reasons.

[19] Finally, the defendants submitted that the plaintiffs' claim should also be dismissed because the granting of the declarations sought would be an exercise in futility. The declaration, it was contended would not yield any benefit to the plaintiffs as any claim of arrears of pensions would be barred by the law of limitation. It was argued that the plaintiffs by their prayers for declaration for payment of arrears of pensions accrued have made their claim for such payment of arrears, subject to Item 97 of the Schedule to the Limitation Ordinance. That would enable them to claim arrears for six years prior to the commencement of these proceedings. However if the court accept the defendants' contention that Item 19 of the Limitation Ordinance applies, then the limitation period is only two years. And since the alleged non-feasance was committed prior to 1 January 2003, the non-feasance is no longer an issue after that date. This is so because after that date no revision or adjustment of pensions can be done without the direction from the Yang di-Pertua Negeri. Therefore since the plaintiffs only filed the action in 2005 any claim for arrears of pensions would be caught by the limitation period. Thus to grant a declaration of the plaintiffs' right to the revised pensions would be useless because no arrears of pensions could be paid in 2005 as it is time barred under Item 19 of the Limitation Ordinance.

Opinions Of The Court

[20] The first issue is which reg. 20(1) is applicable to the plaintiffs? Is it the pre-amendment Regulation 20(1) or the 2003 amended provision of the Regulation that applies? In this respect I agree with the view expressed by the learned Skinner J in *Andrew*

Nyabe (Originating Summons No. 24-421-2005-1) when he said in the judgment (at p. 10 of the certified copy of the judgment) attached to the plaintiffs' submissions that:

> As far as the first revision to a member's salary which occurred in 1992 is concerned, that revision came into force on 1.6.1992 *vide* members of the administration and Members of Dewan Undangan Negeri (Remuneration, Pensions & Gratuities) (Amendment) Ordinance No. 2 of 1992. On that date, as the ordinance stood, there was no requirement in regulation 20(1) for a direction to be received from the Yang di-Pertua Negeri before a former member's pension could be recomputed. That regulation as it stood in 1992 directed that there shall be an adjustment whenever the salaries of the members are revised. Further, by regulation 20(2) the recomputed pension shall be payable with effect from the coming into force of the revised salaries'. Accordingly, all the plaintiffs were entitled to have the salaries on which their pensions were based adjusted, and their pensions recomputed and paid to them from 1.6.1992 as provided in regulation 20(2).

[21] In my opinion what is material to consider is this: what was the Regulation that governed the re-adjustment of salaries and the re-computation of the pension based on the adjusted salaries when the salaries revision came into force on 1 June 1992? The answer I think is quite obvious. It was reg. 20(1) before it was amended. Given the language used in the pre-amendment reg. 20(1) I agree with the conclusion of the learned judicial commissioner in *Haji Wan Habib Syed Mohamed*'s case that prior to the amendment of reg. 20(1), whenever there is a salary revision of the members, there was automatic adjustment of the last drawn salaries of the pensioners followed by automatic revision of their pensions. In other words pensioned members acquired vested rights under the pre-amendment reg. 20(1) to have their last drawn salaries adjusted and the pensions re-computed based on the adjusted salaries once a salaries revision for the members came into effect before 1 March 2003. Once the salaries revision, prior to the date of the amendment of the reg. 20(1), is put into effect, then by virtue of that provision there is a statutory duty for on the part of the defendants to undertake the adjustment of the salaries of the retired Members and thereafter to re-compute the pensions payable to them based on the adjusted salaries without the need of a direction from the Yang di-Pertua Negeri to do so.

[22] The above conclusion does not mean that the plaintiffs are also entitled to the revision of salaries which was effective from 1 March 2003. This is because along with the revision in 2003, the defendants also amended reg. 20(1) by introducing a new element to trigger adjustment of the salaries and the consequential

re-computation of the pensions payable. This new element comes in the form of a direction by the Yang di-Pertua Negeri. Under the amendment any adjustment of salaries and re-computation of pensions thereof can only be done after the direction had been issued. In this instant case the plaintiffs have failed to show that there was such direction issued by the Yang di-Pertua Negeri in respect of the 2003 salaries revision.

[23] The next issue for consideration is whether the plaintiffs' claim is time barred. For this issue it is necessary to consider whether there is non-feasance on the part of the defendants in failing to revise or adjust the salaries of the retired members, in particular that of the plaintiffs upon the coming into force of the salaries revision on 1 June 1992. The defendants denied it; but at the same time the defendants argue that even if there is non-feasance on their part, then the limitation period applicable is the period stipulated under Item 19 of the Schedule to the Sarawak Limitation Ordinance which is two years from the act of non-feasance and not six years as under Item 97 of the Ordinance as claimed by the plaintiffs.

[24] The *Shorter Oxford English Dictionary on Historical Principles*, Vol. II, 3rd edn., published by Oxford University Press, defines the words 'non-feasance' to mean 'omission of some act which ought to have been done'. In this case the act or omission complained of is the failure of the defendants to adjust the salaries of the plaintiffs following a revision of salaries of the Members of the Administration and the Members of the Dewan Undangan Negeri on 1 June 1992, hence resulting in the failure on the part of the defendants to accordingly re-compute the pensions to which each of the plaintiffs is entitled to based on the adjusted salary had that been done or undertaken. In my opinion the 'failure' comes within the meaning of the definition of the word 'non-feasance' as stated above. This is so because as I have said earlier pursuant to the pre-amendment reg. 20(1), the defendants ought to have adjusted the plaintiffs' salaries and re-computed the pensions payable to them as from 1 June 1992 when the salaries revision was put into effect without any requirement for any direction from the Yang di-Pertua Negeri.

[25] In this regard I am mindful of what was said by the learned judge in *Wan Habib*'s case *supra*, on this point. In that case the learned judicial commissioner rejected the submission by the plaintiff

counsel that the action in that case is one of non-feasance and the duty to re-compute the pensions is mandatory and that a fresh period of limitation starts to run after every breach. The learned judicial commissioner also rejected the argument that until the defendant in that case makes a final stand on re-computation, time does not run. Instead the learned judicial commissioner expressed the view that '(T)he statutory duty to re-compute starts whenever there is a salary revision of the salary of the members of DUN and with it the duty to pay the re-computed pension. Thus the limitation period starts when there is a breach of the statutory duty to pay'. And after perusing the provisions of the Limitation Ordinance the learned Judicial Commissioner concluded that the applicable Item applicable as regard to limitation period in that case was Item 97 which provides that suit for which no period of limitation is provided elsewhere in the Schedule to the Ordinance then period applicable is six years.

[26] Unfortunately however the learned judicial commissioner did not make any reference to Item 19 of the Limitation Ordinance despite the fact that he had found that there was a breach of statutory duty on the part of the defendant in not adjusting the plaintiff's salaries and re-computing the pensions payable to the plaintiff based on the adjusted salaries in that case. He also did not state his reasons for his choice of Item 97 over Item 19 of the Ordinance. However it is apparent that the learned judicial commissioner was greatly swayed by the fact that there was a breach of statutory duty and that there was no period of limitation provided elsewhere for such breach.

[27] On this last point I respectfully beg to differ. I think once the issue of non-feasance is raised which in that case the court had recognized that there was a statutory breach of duty, Item 19 of the Ordinance needs to be looked at and considered. If this had been done then one can see that there is a period of limitation being provided for non-feasance which in that case, as in this case, is the failure to carry out a statutory duty to adjust the plaintiffs' salaries and to re-compute the pensions based on the adjusted salaries.

[28] The issue of limitation was also discussed by the learned Justice Skinner in *Andrew Nyabe & Ors*, s*upra*. In that case however the defendants, who were the same defendants as in this case, did not raise the issue of non-feasance. Instead the defendants' submissions on the issue of limitation in that case was summed up by the learned judge in this way:

A According to the defendants the plaintiffs acknowledge that the period within which they should have brought this suit is 6 years under Item 97 Part 1V of the Schedule to the Limitation Ordinance which states that the period of limitation in respect of a suit for which no period of limitation is provided elsewhere in this schedule is 6 years.

B According to the defendants the first revision came into effect on 1.6.1992 but the plaintiffs have waited 13 years before commencing this suit. Hence their claims are barred by limitation and should be dismissed.

I do not agree.

C

[29] Having said that the learned judge then went on to say:

Regulation 3(2) of the Ordinance makes it clear that the pension of a person who ceases to be a member is payable monthly. Under the Schedule to the Limitation Ordinance, the time from which the period
D of limitation begins to run is 'when the right to sue accrues'. The plaintiffs' right to sue for their recomputed pensions accrued each month after 1.6.1992 when their right to be paid their recomputed pensions in respect of the first revision accrued. The plaintiffs commenced this action on 16.11.2005. Given that their claims will be barred only after 6 years of their right to sue for their recomputed
E monthly pensions having accrued, I find nothing wrong in the plaintiffs bring this action to claim all the recomputed monthly pensions which were payable to them for a period of 6 years immediately preceding the commencement of this suit. Such claims are clearly not time barred as alleged, this suit having been commenced within 6 years of the accrual of the plaintiffs' right to be paid those moneys.

F

[30] It is obvious from the above passages by the learned judge that in *Andrew Nyabe*'s case, *supra*, the same defendants as in this instant case on a similar issue has acknowledged the plaintiffs' claim in that case that they had six years to file the action from the date
G the 1st breach occurs which was on 1 June 1992 and that the breach is a continuing one in that it occurs on each month the pensions is paid but not revised or adjusted in accordance with reg. 20(1) before it was amended. This is the distinguishing feature in the arguments in this instant case and the *Andrew Nyabe*'s case, supra. In the instant case the defendants have casted the arguments
H on limitation in a different way. The defendants are saying that the plaintiffs do not have six years to commence this action. Instead the plaintiffs only have two years because the ground on which the plaintiffs are seeking relief is that the defendants have failed to adjust the salaries on revision and have failed to re-compute the
I pensions payable on the adjusted salaries which is a non-feasance.

[31] Having regards to the views expressed by the learned judge and the learned judicial commissioner in the two cases mentioned above and having regards also the facts of the instant case, I am inclined to follow Skinner J's reasoning and conclusion that the right of the plaintiffs to sue for their re-computed pensions accrued each month after 1 June 1992 when their right to be paid their re-computed pensions in respect of the first revision accrued. In this respect I also agree with the view of the learned Judicial Commissioner in *Wan Habib*'s case, *supra* that the statutory duty to re-compute starts whenever there is a revision of the salary of the Members of the Administration and that of the Dewan Undangan Negeri, before the amendment to reg. 20(1) on 1 March 2003.

[32] However I do not agree that Item 97 of the Limitation Ordinance applies. On the facts of the case my view is that Item 19 of the Ordinance is the more appropriate Item to apply. This is so because on the facts it is obvious that the plaintiffs have commenced this action as a result of the defendants' omission to adjust the plaintiffs' salaries following the salaries revision on 1 June 1992.

[33] This present action was filed on 24 April 2007. Therefore on the above reasoning I am of the view that the plaintiffs' action is not time barred in so far as it is seeking the court order to declare that the plaintiffs are entitled to the adjustment of their salaries based on the salaries revision that came into force on 1 June 1992 and the consequential re-computation of the pensions payable to each of them based on the adjusted salaries. However as to the declaration of their entitlements to the accrual pensions, I am of the view that by virtue of Item 19 of the Limitation Ordinance, the plaintiffs are only entitled to the arrears of pensions which have accrued the last two years preceding the filing of this action.

[34] Accordingly therefore I grant to each of the plaintiff (a) a declaration that each of the plaintiff is entitled to have his or her salary on which his or her pension is based adjusted to the revised salary paid to a Member under the Members of the Administration and Members of Dewan Undangan Negeri (Remuneration, Pensions & Gratuities) (Amendment) Ordinance No. 2 of 1992, and to have his or her pension re-computed accordingly; (b) a declaration that the 1st and 2nd defendants do pay to each of the plaintiff his/her arrears of re-computed pensions for a period of two years immediately preceding the filing of this action ie, from 24 April 2005 to 24 April 2007 together with interest thereon at the rate of

A 8% per annum; (c) an order that the 1st and 2nd defendants do pay each of the plaintiff his or her re-computed pensions from 24 April 2007 till date of judgment together with interest thereon at 8% per annum and thereafter with immediate effect to continue to pay to each of the plaintiff his or her duly revised pensions; (d) the
B plaintiffs are not entitled to the salary adjustment upon the salaries revision that come into effect on 1 March 2003 and the re-computation of the pensions thereon unless a Direction to that effect had been issued by the Yang di-Pertua Negeri under reg. 20(1) of the Ordinance as amended on 1 March 2003, and (e)
C costs of this proceedings to the plaintiffs.

D

E

F

G

H

I